

Applicants : Scott C. Young et al.
Appln. No. : 10/061,699
Page : 4

REMARKS

With this amendment, claims 1-20, all of which have been rejected, remain present in this application. For the reasons further set forth below, Applicants submit that claims 1-20 are allowable. Applicants have submitted herewith a request for a one month extension of time and have authorized and do authorize the charging of the appropriate fee to Deposit Account No. 16-2463.

In the present Office Action: the drawings were objected to as failing to comply with 37 C.F.R. 1.84(p)(5) because they included reference signs not mentioned in the description; claims 7-8 and 10-20 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention; claims 1-2, 4, 6-8, 10-11, 13 and 15-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Marshal Brass Part No. F21B34 (hereinafter F21B34) in view of Marshall Brass Part No. F26B44 (hereinafter F26B44); claims 3 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over F21B34 in view of F26B44 and in further view of U.S. Patent No. 3,376,053 (hereinafter Novakovich); claims 5 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over F21B34 in view of F26B44 and in further view of U.S. Patent No. 2,373,253 (hereinafter Martin); claim 9 was rejected under 35 U.S.C. §103(a) as being unpatentable over F21B34 in view of F26B44 and in further view of U.S. Patent No. 5,305,785 (hereinafter Humber); claims 17, 18 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over F21B34 in view of F26B44 and in further view of Humber and in still further view of Novakovich; and claim 19 was rejected under 35 U.S.C. §103(a) as being unpatentable over F21B34 in view of F26B44 and in further view of Humber and in still further view of Novakovich and in further view of Martin.

With respect to the drawings objections, Applicants have amended the specification to reference items 120 and 122 and, as such, submit that the objection to the drawings is now moot.

With respect to the rejection of claims 7-8 and 10-20 under 35 U.S.C. §112, second paragraph, while Applicants believe the claims are definite, Applicants have nevertheless

Applicants : Scott C. Young et al.
Appln. No. : 10/061,699
Page : 5

amended claims 7, 10 and 17 for clarification and to facilitate further examination of the application on its merits and, as such, submit that the 35 U.S.C. §112, second paragraph, rejections are now moot. At the outset, Applicants note that Applicants' claimed fitting addresses the need for a fitting that can readily be fixed with respect to a support structure that also mitigates alignment problems, while at the same time providing a reliable leakproof connector between the fitting and associated connecting pipes.

With respect to the rejection of claims 1-2, 4, 6-8, 10-11, 13 and 15-16 under 35 U.S.C. §103(a) as being unpatentable over F21B34 in view of F26B44, Applicants note that §2143 of the Manual of Patent Examining Procedure (MPEP) sets forth three basic criteria that must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference(s) when combined must teach or suggest all the claim limitations.

MPEP §2143 goes on to say that the teaching or suggestion to make the claimed combination must be found in the prior art not in applicant's disclosure. With reference to §2143.01 of the MPEP, the level of skill in the art cannot be relied upon to provide the suggestion to combine references. Further, MPEP §2143.01 states obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention when there is some teaching, suggestion or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

In sum, it is Applicants' position that the Examiner's conclusion of obviousness is based on impermissible hindsight reasoning (see MPEP §2145(X)(A)) in that the rejection is based upon knowledge gleaned only from Applicants' disclosure and does not establish a level of ordinary skill in the art at the time the claimed invention was made. (See *In re McLaughlin* 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971)).

Applicants : Scott C. Young et al.
Appln. No. : 10/061,699
Page : 6

With respect to the Examiner's rationale for making the combination, i.e., "[i]n view of the teaching of document F26B44, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ears of the F21B34 document with apertured attachment ears in order to permit the threaded nut of F21B34 to be attached to a support." Applicants certainly agree that doing so could produce the claimed invention. However, it is unclear to Applicants why one of ordinary skill would be motivated to make the modification, absent Applicants' teaching to do so. More specifically, it is Applicants' position that neither F21B34 or F26B44 provide any motivation, either explicitly or implicitly, nor has the Examiner established that one of ordinary skill in the art would have had that general knowledge at the time Applicants' invention was made. Further, modifying the nut (ears) of the F21B34 termination would render the termination inoperable for its designed purpose and change its principle of operation (see MPEP §§2143.01 and 2145(X)(D)). That is, the nut (ears) of the F21B34 termination are designed to rotate so as to secure the termination to an external fitting. In fact, the nut of the F21B34 termination is provided with ears so as to allow an individual to grip the nut to facilitate rotation of the nut. As such, Applicants submit that the 35 U.S.C. §103(a) rejection based upon the combination of F21B34 and F26B44 is improper and should be withdrawn.

Further, Applicants submit that claims 3, 5, 9, 12, 14 and 17-20 are dependent upon allowable claims and, at least, for this reason are also allowable. For the reasons set forth above, Applicants respectfully submit that the application is now in condition for allowance. No new matter has been entered with the changes to the specification and claims. Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The first page of the marked-up version is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE," with added text underlined and deleted text in [brackets].

Applicants : Scott C. Young et al.
Appln. No. : 10/061,699
Page : 7

CONCLUSION

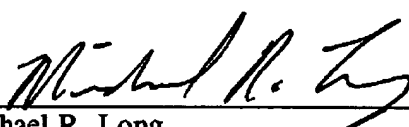
For all the foregoing reasons, Applicants respectfully submit that claims 1-20 are now allowable. If the Examiner has any questions or comments with respect to this response, the Examiner is invited to contact the undersigned at (616) 949-9610.

Respectfully submitted,

SCOTT C. YOUNG ET AL.

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Applicants : Scott C. Young et al.
Appln. No. : 10/061,699
Page : 8

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Specification:

Paragraph 16 of the Specification has been amended as follows:

--The elbow adapter includes a first portion centrally positioned with respect to a first axis 120 and a second portion centrally positioned with respect to a second axis 122. The second axis 122 is not colinear (e.g., substantially orthogonal (eight-five to ninety-five degrees) or at an obtuse angle) with the first axis 120 and an outer surface of the first portion of the elbow adapter is shaped to receive the retaining ring, which retains the threaded nut on the first portion of the elbow adapter, while allowing the elbow adapter to rotate (e.g., swivel) with respect to the threaded nut. The elbow adapter may also be made of a variety of materials (e.g., brass) and a suitable material for the retaining ring is stainless steel or steel.--

In the Claims:

Claims 7, 10 and 17 have been amended as follows:

7. (Amended) The swivel drop ear elbow fitting of claim 1, further including:
a seal with an inner diameter sized to receive the first portion of the hollow elbow adapter and an outer diameter sized to substantially eliminate fluid leakage between the elbow fitting and an external fitting that is threadingly received by the threaded nut.

10. (Amended) A swivel drop ear elbow fitting, comprising:
a threaded nut including a plurality of integrated attachment ears located along an external periphery of the threaded nut, wherein each of the attachment ears includes an aperture for receiving a fastener for securing the threaded nut to a stationary support;

Applicants : Scott C. Young et al.
Appln. No. : 10/061,699
Page : 9

a retaining ring;

a hollow elbow adapter including a first portion centrally positioned with respect to a first axis and a second portion centrally positioned with respect to a second axis, wherein the second axis is not colinear with the first axis, and wherein an outer surface of the first portion of the elbow adapter is shaped to receive the retaining ring which retains the threaded nut on the first portion of the hollow elbow adapter while allowing the hollow elbow adapter to rotate with respect to the threaded nut; and

a seal with an inner diameter sized to receive the first portion of the hollow elbow adapter and an outer diameter sized to substantially eliminate fluid leakage between the elbow fitting and an external fitting that is threadingly received by the threaded nut.

17. (Amended) A swivel drop ear elbow fitting, comprising:

a threaded nut including a plurality of integrated attachment ears located along an external periphery of the threaded nut, wherein each of the attachment ears includes an aperture for receiving a fastener for securing the threaded nut to a stationary support, and wherein threads of the threaded nut are straight threads;

a retaining ring;

a hollow elbow adapter including a first portion centrally positioned with respect to a first axis and a second portion centrally positioned with respect to a second axis, wherein the second axis forms an obtuse angle with respect to the first axis, and wherein an outer surface of the first portion of the elbow adapter is shaped to receive the retaining ring which retains the threaded nut on the first portion of the hollow elbow adapter while allowing the hollow elbow adapter to rotate with respect to the threaded nut; and

a cone-shaped seat made of one of an elastomeric material and rubber with an inner diameter sized to receive the first portion of the hollow elbow adapter and an outer diameter sized to substantially eliminate fluid leakage between the elbow fitting and an external fitting that is threadingly received by the threaded nut.